



XI-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<u>HIGH COURT OF CHHATTISGARH AT BILASPUR</u>	
	<u>CRIMINAL APPEAL NO. 1512 OF 2000</u>	
	<u>APPELLANT</u>	Rajendra Kumar Choubey S/o Dhan Prasad Choubey, Aged 24 years, Resident of Tikrapara, Raipur (M.P.)
		<u>VERSUS</u>
	<u>RESPONDENT</u>	State of Madhya Pradesh, Through : Police Station Tikrapara, Raipur (M.P.)
	Present: Mr. R.K. Jain, counsel for the appellant. Mr. Neeraj Mehta, learned PL for the State/respondent.	
	<u>ORAL JUDGMENT</u> (30 th August 2007)	
	<u>Dhirendra Mishra, J</u> The appellant has preferred this appeal against judgment of conviction and order of sentence dated 26 th April 2000 passed in S.T.No. 176/99 whereby learned IV Additional Sessions Judge, Raipur (M.P.) has convicted appellant Rajendra under Sections 366, 368 and 376 of the Indian Penal Code and sentenced him to undergo R.I. of 10 years on each count and also imposed fine of Rs.2,000/-, Rs.1,000/-, Rs.5,000/- respectively and in default thereof, to further undergo R.I. for six months, R.I. for three	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	months and R.I. for six months, respectively. - All the sentences have been directed to run concurrently. 2. Case of the prosecution, in brief, is that Sanjay Yadav (PW-4) brother of the prosecutrix lodged a missing report of Ex.P/19 in Police Station Tikrapara, Raipur mentioning therein that his sister, the prosecutrix, aged 16 years, has left the home on 13.1.1999 at about 7.00 a.m. without informing the family members whereupon the prosecutrix was recovered by police of Police Station Balod on 24.1.1999 from the custody of the appellant vide recovery memo of Ex.P/7. Thereafter, report was lodged by H.L. Tiwari (PW-21) vide Ex.P/26 whereupon offence under Sections 363, 366 and 376 of the IPC was registered against the appellant. During investigation the prosecutrix was sent for medical examination to Medical College Hospital Raipur where Dr. (Smt.) Nisha Mukherjee (PW-11) examined the prosecutrix and gave her report of Ex.P/13. Wearing apparels of the prosecutrix and the accused as also pubic hair of the accused were taken into possession and the same were sent for chemical examination to Forensic Science Laboratory, Raipur vide Ex.P/20. The copy of school admission register of Ex.P/12-C was seized from Head Master Abdul Aziz Siddique (PW-9). 3. After completing investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Raipur which was	

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आदेश पत्रक (पूर्वानुबद्ध)

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	received on transfer by learned Additional Sessions Judge for trial. 4. During trial the prosecution examined 21 witnesses. Thereafter, statement of accused Rajendra was recorded in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. He also examined defence witnesses namely Kumari Bai (DW-1), sister of the accused/appellant and Tejabai (DW-2), wife of the accused/appellant. 5. Learned trial Court after hearing counsel for the respective parties acquitted the accused/appellant of charge under Section 363 on the ground that age of the prosecutrix was more than 16 years on the date of incident and convicted and sentenced him as mentioned in paragraph 1 of this judgment by recording a finding that the accused/appellant enticed the prosecutrix with an intention to commit sexual intercourse with her, thereby kidnapped her and wrongfully confined and committed rape upon her. 6. Conviction of the accused/appellant is based on the statements of the prosecutrix (PW-1), Indu (PW-2) mother of the prosecutrix and Sanjay Kumar Yadav (PW-4) brother of the prosecutrix. The prosecutrix has deposed before the Court that accused Rajendra had forcibly taken her with him on the date of	

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आदेश पत्रक (पूर्वानुबन्ध)

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	incident. The accused was a priest in the nearby temple whereas she used to do the work of cleaning the utensils of temple and also the temple. Whenever she visited temple the accused used to give her something with <i>Prasad</i> under the effect of which she remembered the accused only and did not listen to any other person. The accused asked her to accompany him, upon which she readily agreed. He took her to Balod and stayed there in the house of Santosh (absconding accused), who is nephew of the accused/appellant. The accused used to beat her and sleep with her and did wrong work for a continuous period of 8 days during her stay in the house of Santosh. After eight days police came to the house of Santosh and they took her along with Rajendra and Santosh to police station where she narrated the whole incident. In cross-examination she has admitted that she is acquainted with wife of Rajendra as she used to visit the house of Rajendra and the name of Rajendra's wife is Kejabai. She has also admitted that when she accompanied Rajendra to Balod, at that time his wife Kejabai and his daughter also accompanied her. She has denied the suggestion that she was in love with Rajendra. In paragraph 14 of her statement she has stated that she slept with Rajendra and his wife in the house of Santosh at Balod. She has denied the suggestion that she accompanied wife of the accused after talking to her and after seeking permission from her home. She has also denied that she was a consenting party. However, she has accepted in paragraph 18 of her	

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	deposition that accused Rajendra never came to her house or called her. In paragraph 23 she has stated that during her stay at Balod she went outside the house of Santosh for easing herself and she did not disclose to anyone about the incident. 7. Indu (PW-2) mother of the prosecutrix has stated that age of the prosecutrix is 15-16 years and she left her studies before three years. Accused Rajendra is priest in the nearby temple and since long they are engaged in cleaning the temple and its utensils and for this purpose she used to send her daughter, the prosecutrix. She has further stated that on the date of incident door of the temple was locked, however, she was not aware whether her daughter had gone with Rajendra. Her son Sanjay enquired from the elder brother of the accused about his sister, on which he informed him that accused Rajendra might have gone to the house of his sister, however, he did not give him the address of his sister. Sanjay could not trace either Rajendra or the prosecutrix whereupon report was lodged by her son Sanjay. Thereafter, the prosecutrix was recovered from the custody of the accused/appellant. In paragraph 9 of her statement she has stated that she is residing at Raipur for the last more than 25 years, her two elder issues were born in her maternal home and rest of the children were born at Raipur and age of the eldest child is 22-23 years and the prosecutrix is her fourth child and difference of age between her two child is 1 ½ to 2 years. Similar	

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	is the statement of Sanjay Kumar Yadav (PW-4), brother of the prosecutrix, who lodged the missing report. This witness has stated that his sister, the prosecutrix, had stated that accused Rajendra had taken her forcibly on the pretext of visiting his sister's house. In paragraph 7 this witness has stated that 15 days prior to the incident the appellant had eve-teased her sister. 8. The trial Court has assessed age of the prosecutrix about 16 years. Case of the prosecution is that age of the prosecutrix was less than 18 years and as such she was minor. To establish age of the prosecutrix, the statement of her mother has been recorded which has been detailed in the foregoing paragraph. If the statement of mother of the prosecutrix regarding her age is accepted in that case, possibility of the prosecutrix being more than 18 years of age on the date of incident cannot be ruled out. Apart from the statement of mother of the prosecutrix, the prosecution has also examined Abdul Aziz Siddique (PW-9), Head Master of the school where the prosecutrix had pursued her studies. This witness has proved the document of Ex.P/12-C being the school admission register. He has stated that name of the prosecutrix is entered at Sl.No. 726 of the school admission register, which was seized from him vide seizure memo of Ex. P/11. He has stated in cross-examination that the above entry was made by him at the time of admission of the prosecutrix and the same has been made on the basis of certificate of Class-V and	

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आदेश पत्रक (पूर्वानुबद्ध)

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	admission to the primary school is given on the basis of affidavit. He has admitted the suggestion that age of the student belonging to illiterate parents is recorded on the basis of information given by them. However, he has further admitted that certificate of Class-V of the prosecutrix was not shown to the police and the same was not seized at the time of seizure of document of Ex.P/12. 9. From perusal of the statement of this witness as also the statement of mother of the prosecutrix, this Court is of the considered opinion that there is no reliable or trustworthy documentary evidence available on record to establish age of the prosecutrix and the prosecution has failed to prove that the prosecutrix was less than 18 years on the date of incident. The lady doctor Smt. Nisha Mukherjee who examined the prosecutrix advised for radiological examination, however, there is no evidence regarding radiological examination of the prosecutrix. In these circumstances, there is no evidence on record to suggest that on the date of incident the prosecutrix was less than 18 years of age. 10. From the evidence available on record particularly from the statements of the prosecutrix on whose evidence the conviction is based, it is evident that she accompanied the accused, his wife and also her daughter to Balod and stayed there in the house of Santosh for a period of eight days. The overall conduct of the	

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आदेश पत्रक (पूर्वानुबन्ध)

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	prosecutrix during this period as is evident from her statement clearly suggests that she accompanied the accused of her own free will as she did not disclose to anyone about the incident at Balod or complained about the conduct of the accused either to wife of the accused or his sister. On the contrary, the defence witness Tejabai (DW-2), wife of the accused, has stated that the prosecutrix resided in the same locality in Raipur, she is acquainted with her as the prosecutrix used to visit her home and they developed intimacy and because of this intimacy she (the prosecutrix) expressed her desire to accompany them in their visit to Balod where sister of the accused resided. The prosecutrix after seeking permission from her parents came to her home and accompanied them to Balod. Similar is the version of Kumari Bai (DW-1), sister of the accused. The version of these two witnesses appear to be more probable in the light of deposition of the prosecutrix who has also admitted that she went to Balod in the company of accused, his wife and his daughter and resided there in the house of his sister i.e. Kumari Bai (DW-1). Thus, the overall evidence available on record goes to suggest that the prosecutrix was a consenting party as she accompanied the accused of her own free will. It has already been held in the foregoing paragraph that the prosecution has failed to prove that the prosecutrix was less than 18 years of age on the date of incident and in these circumstances, finding of the trial Court that the accused/appellant abducted the prosecutrix by enticing	

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	her with an intention to have illicit sexual intercourse with her and took her to Balod and raped her there for a continuous period of eight days, is not proper and the same cannot be sustained. 11. So far as conviction of the accused/appellant under Section 368 of the IPC is concerned, no ingredients of this section is made out against the present appellant. 12. In the result, the appeal is allowed. Conviction of the appellant under Sections 366, 368 and 376 and sentences passed thereon, are set aside. He is acquitted of the above charges. He be set at liberty forthwith if not required in any other case.	Sd/- Dhirendra Mishra Judge

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